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ELECTRONIC FRONTIER FOUNDATION
CINDY COHN (145997)
cindy@eff.org
LEE TIEN (148216)
tien@eff.org
KURT OPSAHL (191303)
kurt@eff.org
KEVIN S. BANKSTON (217026)
bankston@eff.org
CORYNNE MCSHERRY (221504)
corynne@eff.org
JAMES S. TYRE (083117)
jstyre@eff.org
454 Shotwell Street
San Francisco, CA 94110
Telephone: 415/436-9333
415/436-9993 (fax)

TRABER & VOORHEES
BERT VOORHEES (137623)
bv@tvlegal.com
THERESA M. TRABER (116305)
tmt@tvlegal.com
128 North Fair Oaks Avenue, Suite 204
Pasadena, CA 91103
Telephone: 626/585-9611
626/ 577-7079 (fax)

Attorneys for Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. AT&T CORP., et al. Defendants.	No. C-06-00672-VRW CLASS ACTION [PROPOSED] ORDER REGARDING REQUEST FOR JUDICIAL NOTICE The Hon. Vaughn R. Walker, Chief Judge

Dockets.Justia.com

Pursuant to Federal Rule of Evidence 201 and the inherent authority of the Court, and having given full consideration to all of Plaintiffs' papers and the relevant authorities, and all of Defendants' responses thereto, and good cause appearing, in accordance with Federal Rule of Evidence 201, it is HEREBY ORDERED as follows:

1. The Court takes judicial notice of certain admissions made by the President of the United States and representatives of the President's Administration about the National Security Agency ("NSA")'s surveillance program, as more particularly described below:

(a) In the fall of 2001 the President authorized the NSA to launch a secret electronic surveillance program (the "Program");

(b) Under the Program, the NSA intercepts electronic communications;

(c) The President has reauthorized the Program more than thirty times, approximately every 45 days, based on periodic review and approval of the Program by the Attorney General and other officials. The President intends to continue reauthorizing the Program indefinitely;

(d) Under the Program, the NSA conducts "electronic surveillance" as defined by the Foreign Intelligence Surveillance Act of 1978 ("FISA"), 50 U.S.C. §1801 *et. seq.*;

(e) Under the Program, the NSA conducts surveillance that would not satisfy the standards of the FISA statute;

(f) Under the Program, the NSA intercepts communications without obtaining a warrant or any other type of judicial authorization;

(g) The Program has been used "in lieu of" the procedures specified under the FISA;

(h) The Administration is not using the 72 hour emergency exception to FISA, 50 U.S.C. §1805(f), to conduct the Program;

(i) Under the Program, an NSA "shift supervisor" is authorized to approve interceptions of communications without need for specific approval from the President, the Attorney General or any judicial authority;

(j) The Program "is a more . . . 'aggressive' program than would be traditionally available under FISA," in part because "[t]he trigger is quicker and a bit softer than it is for a FISA warrant";

(k) Under the Program, communications are intercepted without probable cause to believe that the surveillance targets have committed or are about to commit any crime, or are foreign powers or agents thereof. Instead, the NSA claims to intercept communications when the agency has, in its own judgment, a "*reasonable basis to conclude* that one party to the communication is a member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda, or working in support of al Qaeda," as well as the communications of individuals it deems suspicious on the basis of its belief that they have some unspecified "link" to al Qaeda or a related terrorist organization, or "want to kill Americans." Put another way, when the NSA believes there is "[i]nherent foreign intelligence value";

(l) Information collected under the Program is retained and disseminated, even when such information is about an American and gives no indication that the individual is involved in terrorism; and

(m) The Administration has not denied that the warrantless surveillance operations may extend beyond the conduct that the President has already publicly acknowledged.

2. The Court take judicial notice of the following public documents, copies of which are attached to Plaintiffs' Request for Judicial Notice, which verify the above-listed facts:

(a) President Bush, Radio Address (Dec. 17, 2005);

(b) Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence, Dec. 19, 2005;

(c) Letter from William E. Moschella, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to congressional leaders, December 22, 2005;

(d) Michael Hayden, Remarks at the National Press Club on NSA Domestic Surveillance (Jan. 23, 2006);

(e) President Bush, Press Conference (Dec. 19, 2005);

(f) Letter from William E. Moschella, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to Senator Arlen Specter, March 24, 2006;

(g) Wartime Executive Power and the NSA's Surveillance Authority Before the Senate Judiciary Committee, 109th Congress (Feb. 6, 2006); and

(h) Letter from Alberto Gonzales to Senator Arlen Specter (February 28, 2006).

* * *

O R D E R

IT IS SO ORDERED.

DATED: ____________________________

____
THE HONORABLE VAUGHN R. WALKER
CHIEF UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via FedEx to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ REED R. KATHREIN
REED R. KATHREIN

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
100 Pine Street, 26th Floor
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

E-mail: ReedK@lerachlaw.com

Mailing Information for a Case 3:06-cv-00672-VRW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Kevin Stuart Bankston**
  bankston@eff.org
- **Cindy Ann Cohn**
  cindy@eff.org wendy@eff.org;barak@eff.org
- **Bruce A. Ericson**
  bruce.ericson@pillsburylaw.com
- **Jeff D Friedman**
  JFriedman@lerachlaw.com RebeccaG@lerachlaw.com
- **Eric A. Isaacson**
  erici@lerachlaw.com jackiew@lerachlaw.com
- **Reed R. Kathrein**
  reedk@lerachlaw.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Corynne McSherry**
  corynne@eff.org
- **Maria V. Morris**
  mariam@mwbhl.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Kurt Opsahl**
  kurt@eff.org
- **Shana Eve Scarlett**
  shanas@lerachlaw.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Theresa M. Traber, Esq**
  tmt@tvlegal.com
- **James Samuel Tyre**
  jstyre@jstyre.com jstyre@eff.org
- **Bert Voorhees**
  bv@tvlegal.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Lee Tien

Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Lee Tien
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110